

Item 3.

Public Exhibition - Draft Outdoor Dining Guidelines

File No: X037861

Summary

Outdoor dining enhances vibrancy and safety in our high streets and neighbourhoods by supporting local businesses, bringing energy and life to public spaces, and transforming dining and shopping precincts into lively, attractive destinations. The City of Sydney (the City) promoted outdoor dining on footpaths and on-street as a response to Covid-19 pandemic, and it has since become an essential part of the City's culture and street life.

This report recommends Council approve updated draft Outdoor Dining Guidelines (draft Guidelines) for public exhibition. The draft Guidelines respond to the increased popularity of outdoor dining across the City and support the NSW Government drive for increased vibrancy.

The draft Guidelines seek to optimise opportunities for outdoor dining on footpaths and footpath extensions in public spaces whilst prioritising protection of the clear path of travel to ensure accessibility. The revised guidelines acknowledge that a clear path of travel for all users along the footpath property boundary is not assured due to the proliferation of Ausgrid low voltage pillars, goods displayed on the footpath and other obstructions. The focus is on maintaining an unobstructed clear path of travel set out from the existing obstructions on the kerb side of a footpath. This provides a more bespoke and certain approach.

The draft Guidelines reduce requirements for food and drink businesses, simplifying the application process and reducing associated time and costs. Key changes include:

- rebalancing the minimum clear path of travel widths depending on street type - making it more certain and easier to fit in outdoor dining
- outdoor dining on both sides of a clear path of travel if footpath space permits
- a more flexible approach to the positioning of clear path of travel between outdoor dining food and drink clusters rather than for the whole block
- conversion of temporary on street dining areas to permanent footpath extensions without concrete barriers
- permitting additional outdoor dining in front of a neighbouring business following consultation
- the safe use of large permanent planter boxes and planter pots to green dining areas
- permitting standing in an outdoor dining area without a table or shelf
- removal of red tape including duplicate requests whereby businesses apply for owners consent (of Council) and apply for outdoor dining permit

- a streamlined approval modification process, whereby Council can issue a modified approval following consultation with a business to reflect the endorsed updates in the Guidelines

At its June 2025 meeting Council asked that staff prepare a report setting out where the footpath could be extended permanently for outdoor dining. In most cases, footpath extensions will replace the temporary concrete barriers used to allow outdoor dining areas to occupy parking spaces, implemented initially as a response to the Covid-19 pandemic.

This initiative has proved very popular with businesses and the community, and the footpath extensions with an edge kerb will provide long-term certainty for operators and improve the look and feel of the City's streets.

To support this, the updated draft Guidelines include eligibility criteria for the City to consider permanent footpath extensions to accommodate outdoor dining. The eligibility criteria will allow City staff to begin the process of consulting with businesses who wish to have their temporary arrangements permanent.

A subsequent report to Council will consider the outcomes of that business engagement and present an implementation plan to roll-out footpath extensions allowing the removal of temporary concrete barriers. This report recommends that the updated draft Guidelines be placed on public exhibition to allow consultation with businesses and the community.

Recommendation

It is resolved that:

- (A) Council approve the updated draft Outdoor Dining Guidelines shown at Attachments B and C to the subject report, for public exhibition;
- (B) Council note that following engagement, a subsequent report to Council will set out an implementation plan including costs for the roll-out of footpath extensions;
- (C) authority be delegated to the Chief Executive Officer to make minor amendments, corrections or design improvements to the updated draft Outdoor Dining Guidelines, to prepare them for public exhibition.

Attachments

Attachment A. Resolution of Council - 23 June 2025 - Item 6.3 - Integrated Planning and Reporting Program and Budget 2025/26 – Adoption

Attachment B. Draft Outdoor Dining Guidelines - with changes shown

Attachment C. Draft Outdoor Dining Guidelines - clean copy

Background

1. Outdoor dining has become an essential part of the City's street life and culture and suits our temperate climate. The City promoted outdoor dining as a response to Covid-19 pandemic restrictions, implementing the Al Fresco Dining program from November 2020 as a joint temporary initiative with the NSW Government.
2. The outdoor program supported businesses by expanding the available dining area into adjacent car parking spaces using concrete barriers to enclose the on-street dining situated on the road surface. The City also placed a freeze on fees for outdoor dining applications and footpath rental charges. That freeze has now been made permanent, with Council no longer charging rent for outdoor dining space. The popularity of outdoor dining continues to increase, with around 863 businesses now having outdoor dining compared to 434 before these measures.
3. The NSW Government has been promoting vibrancy through reducing red tape for the night-time economy, encouraging live entertainment, and deregulating outdoor dining through its changes to the State Environmental Planning Policy 2008 (Exempt and Complying Codes). These changes include allowing live entertainment without a development application in private outdoor dining areas, providing existing relevant conditions are met.
4. The updated draft Outdoor Dining Guidelines (draft Guidelines) recognise this evolution of outdoor dining, its widespread popularity with community and business and desire to see outdoor dining opportunities increase. The updated draft Guidelines reduce red tape for businesses and support the NSW Government direction for increased vibrancy and street activity. At the same time, the updated Guidelines recognize that there are regular boundary side obstructions, such as Ausgrid low voltage pillars, goods displays, steps, ramps and signs on the footpath along the property boundary interfering with the clear path of travel for all users. This situation can be improved.
5. The updated draft Guidelines rebalance the area for dining relative to minimum clear paths of travel for all users. The width of the clear path of travel depends on the street type. In approving applications for outdoor dining, Council will take a more flexible approach to positioning the clear path of travel depending on the existing conditions such as obstructions by trees, light poles, parking meters and signalled pedestrian crossings. Council will have regard to clusters or groups of food and drink businesses and position of obstructions in locating clear paths of travel.
6. There is new guidance on the safe use of planter boxes and pots in outdoor dining areas, to enable greening of footpath areas provided that they are safe and reasonably maintained by the business.
7. In addition, the Guidelines remove restrictions on standing and on live entertainment, simplify language and streamline the application and assessment process.
8. In June 2025, Council resolved that the City would investigate those locations where the footpath can be permanently extended into road space for outdoor dining, consider criteria for the extension of the footpath, and the appropriate monetary contributions from businesses towards the capital costs. This Council Resolution is at Attachment A.

9. The draft Guidelines include eligibility criteria for footpath extensions. The criteria will allow City staff to engage with businesses on making the temporary on-street dining arrangements permanent. Of the 175 on-street spaces approved, 48 have been or are planned to be made permanent through master planned public domain upgrades in the City's capital works program. These include on George and Pitt Streets in Central Sydney and on Crown, Stanley and Victoria Streets in the villages.
10. For the remaining 127 temporary sites, the City will work with businesses to extend the footpath outside their premises to replace the temporary concrete barriers and improve the look of City streets, while allowing long-term certainty for businesses. For eligible sites, the City will install a footpath extension that matches the surrounding footpath. Following business engagement, staff will bring a report to Council setting out an implementation plan for the permanent footpath extensions. The report will include timing and costs of the roll-out.
11. The existing temporary on-street dining for these sites will be extended until such time as the capital works commence on the footpath extensions, subject to all other criteria being met. The City will continue to accept new applications to use on-street parking space for outdoor dining, with temporary concrete barriers in place until such a time as the space can be made permanent, subject to criteria being met.
12. The updated draft Guidelines reinstate the potential to extend outdoor dining on the footpath in front of an adjacent premises as additional outdoor seating following consultation with the adjacent premises. If the adjoining premises becomes vacant the use may continue until such time as circumstances change. If the adjacent premises becomes a food and drink business, approval to occupy may be adjusted or withdrawn.
13. The updated draft Guidelines will be reported to Council for adoption following public exhibition and consideration of submissions. That report will include the implementation plan for the roll-out of footpath extensions.

Draft Outdoor Dining Guidelines for exhibition

14. This report recommends the public exhibition of the updated draft Outdoor Dining Guidelines. A marked-up copy is at Attachment B. A clean copy with no mark-ups has been included at Attachment C for exhibition. The updated draft Guidelines include the following amendments:

Clear path of travel

- (a) Priority is given to a more certain minimum clear path of travel by avoiding footpath obstructions on both sides. The set out for a clear path of travel will either be from the minimum clearance from the kerb type (parking or moving traffic lane), or more commonly, from existing obstructions on the kerbside such as trees, light poles, parking meters and parking control signs. By setting out the clear path of travel from kerbside obstructions, this better accommodates building side obstructions such as Ausgrid low voltage pillars, display of goods and window seats. Provided there is sufficient width, this approach can support dining on both sides of the clear path of travel. Delineation markers to assist businesses with maintaining the clear path of travel may be installed.

- (b) Widths of clear paths of travel will be based on the hierarchy of street types in the Sydney Streets Code 2021. However, the preferred and minimum widths of the clear path of travel have been adjusted to better balance outdoor dining area in tight locations with footpath space for all users. If adopted post exhibition, the preferred and minimum widths of clear paths of travel for outdoor dining according to street type will be updated in the Sydney Streets Code 2021 for consistency.
- (c) A more reliable clear path of travel will need to be positioned according to actual street conditions. There are often obstructions on the building side of the footpath particularly with the proliferation of Ausgrid low voltage pillars, access ramps, steps and display of goods. The clear path of travel should be consistent for clusters of food and drink premises, rather than being in one alignment for the whole block with localised obstructions. This more flexible approach according to existing conditions will ensure more certainty for footpath users and free up more footpath space for outdoor dining.
- (d) Where there is a concentration or cluster of food and drink businesses, the continuous minimum clear path of travel (for example, 1.5 metres wide on connecting main streets), must be provided with a 1.5 metres long x 2 metres wide passing zone every for every 20 metres of travel. The passing zone should also enable access to the kerb for pedestrians to cross the street.

Reduced red tape

- (e) Planter boxes or pots are permitted in the outdoor dining area and can stay on the footpath outside of operating hours, provided it is safe and the clear path of travel for all users is maintained at all times.
- (f) Standing in outdoor dining areas is no longer restricted by the Roads Act or the Guidelines and it is not necessary to use a table when standing.
- (g) Outdoor dining is available to a broader range of businesses and removes the outdated requirements that outdoor dining areas require food to be ordered.
- (h) Requirements regarding toilet provision and for the operation of gas heaters are removed.
- (i) The minimum area threshold of outdoor dining applications requiring notification is increased from 10 square metres to 20 square metres for applications outside Central Sydney.
- (j) Prohibition on live entertainment is removed, consistent with the NSW State Environmental Planning Policy (Exempt and Complying Codes).
- (k) The separate requirements for a business to obtain Council consent as landowner and provide evidence of public liability insurance is no longer required at the time of applying. Dining approvals will require that appropriate insurance is to be maintained and produced to Council on request.
- (l) Council no longer charges fees for the use of the footpath. Security deposits and requirements that relate to rental fees will no longer be required from businesses.
- (m) Other minor amendments simplify the draft Guidelines to streamline the application and assessment process.

Clear path of travel aligned with the Sydney Streets Code

15. The draft Guidelines align with the hierarchy of street types in Sydney Streets Code 2021. The preferred and minimum clear path of travel has been adjusted for outdoor dining areas. This is the area of the footpath kept clear for the safe movement of pedestrians and all users.
16. It is proposed to retain the absolute minimum 1.2 metres clear path of travel for public domain furniture and outdoor dining. In relation to outdoor dining, the proposed minimum clear path will be 3.0 metres for City Centre streets, 2.8 metres for shared zones, 2.0 metres for village main streets such as Crown Street or Glebe Point Road and 1.5 metres for other streets.

Planters and greenery is encouraged with safety conditions

17. Greenery can improve the attractiveness of outdoor dining areas and enhance the experience for diners. The City's Footpath Gardening Policy already enables businesses to place planter boxes and planter pots on the street, providing they respect the needs of other footpath users. This includes ensuring the planters or pots have no sharp edges and that they continue to allow safe movement of pedestrians.
18. The draft Guidelines include amendments to make it clear that businesses can include planter boxes and large pots in their outdoor dining areas, provided that they are safe, do not obstruct utilities and service pits, and maintain the preferred clear path of travel to allow easy movement of pedestrians and other users. Planter boxes or pots may remain outside when the business is not in operation, provided they are safely positioned.

Some outdated conditions have been removed

19. The current Guidelines include legacy conditions that required food to be served, required standing patrons to be at a high table, and prohibit live entertainment. These are not consistent with the evolution of outdoor dining in the City, and with the broader NSW Government effort to reduce red tape and promote vibrancy. These requirements have been removed in the draft Guidelines.
20. Conditions requiring patrons to be seated or standing at a table while drinking are no longer imposed on new approvals and will not be imposed on any new approvals going forward. The City will not direct resources to enforcing compliance with this condition where it remains on an approval.
21. While the prohibition on live entertainment has been removed, there is unlikely to be a significant take-up from businesses due to the limited amount of footpath space available and the preference for operators to maximise their seating opportunities.
22. Under the draft Guidelines operators would now be able to apply for additional outdoor dining in front of neighbouring premises. Any approval will be subject to consultation with the neighbouring premises.

Assessment processes streamlined

23. The draft Guidelines propose raising the threshold for notifications for new outdoor dining applications outside of Central Sydney. Currently, new applications are notified where the proposed dining area is greater than 10 square metres, which is large enough to seat approximately 10 to 15 people. Notification can require between 20 and 2,000 letters per application. In the past 12 months approximately 53,000 notification letters were sent, with only around 300 submissions, a response rate of 0.6%. Generally, these submissions raise issues already required to be assessed under the Guidelines. Notification adds a minimum of 11 days to each assessment.
24. Given the low rate of submissions and the potential to improve assessment times, the draft Guidelines propose changing the threshold from 10 square metres to 20 square metres outside of Central Sydney. While reducing the number of notification letters issued and speeding up assessment times, it will have little material effect on assessment outcomes as generally the issues raised are included in the Guidelines and considered as part of the process.
25. Applications under the draft Guidelines no longer consider:
 - (a) gas heaters, as they are regulated by Australian Standards
 - (b) toilet availability, which is governed by the National Construction Code and Liquor Licensing and is not essential to many smaller types of outdoor dining which can be a short duration experience for customers
26. The updated draft Guidelines also remove the requirement for an operator to pay a security deposit or to pay rent. Operators are required to maintain public liability insurance.
27. The existing Guidelines include guidance for the temporary use of on road parking spaces for outdoor dining in Appendix 1. This has been removed from the updated draft guidelines, and those applications will be assessed against the criteria for footpath extensions.
28. Other minor editing changes simplify the language and diagrams to make the draft Guidelines clearer for operators.

Permanent footpath extensions are considered in the draft Guidelines

29. The updated draft Guidelines include criteria regarding the suitability of sites for the footpath extensions. Criteria for suitability include locations where:
 - (a) there are no bus stops or bus zones, clearways, no stopping zones, designated parking spots for police, ambulances, car share, wedding or funeral vehicles, Australia Post facilities and the like
 - (b) space is not needed to access utilities or services
 - (c) the loss of parking or loading space is considered to not unreasonably affect local businesses and residents
 - (d) the gradient is safe, and the use will not adversely affect drainage

- (e) there are no current or planned bike lanes, garden beds, or tree plantings
 - (f) the speed limit of the street does not exceed 40km/h
 - (g) the street is not one of those identified for, or has not already been subject to, comprehensive master plan street upgrade, with relevant streets listed in the draft Guidelines. Until a future upgrade has commenced, the temporary on road arrangement with barriers can be applied for
 - (h) approval is subject to concurrence from relevant authorities and bodies
 - (i) the total cost of individual footpath extensions will be considered against total cost to be included in the future implementation plan after consultation with businesses.
 - (j) Businesses commit to using the dining area at least 7 hours per day, and at least 5 days per week, with one of those days preferably falling on a weekend.
30. If Council approves the public exhibition of the draft Outdoor Dining Guidelines shown at Attachment C, it will be placed on public exhibition for at least 28 days, after which submissions will be considered and the updated draft guidelines reported back to Council for adoption.

Key Implications

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

31. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. The proposed changes to the City's Outdoor Dining Guidelines are aligned with the following strategic directions and objectives:
- (a) Direction 1 - Responsible governance and stewardship - the proposed changes seek to balance public and private interest in the use of public space.
 - (b) Direction 3 - Public places for all - the proposed changes work to ensure that public and private interests over public space are balanced when considering applications for use of public space.
 - (c) Direction 4 - Design excellence and sustainable development - the proposed changes seek to protect the quality and amenity of public space and ensure that outdoor dining adds to the interest and vitality of those spaces.
 - (d) Direction 5 - A city for walking, cycling and public transport - the proposed changes manage footpath use in a way that prioritises the movement of people walking and cycling.
 - (e) Direction 7 - Resilient and diverse communities - the proposed changes support the equitable use of public space, support strong local businesses and economies, and protect valued opportunities for community interaction.

Risks

32. There is some financial risk associated with the provision of the outdoor dining program. The City has a responsibility to ensure that it has sufficient resources in the short, medium and long term to provide the levels of service that are both affordable and considered appropriate by the community. Sufficient budget has been included in the Long-Term Financial Plan for support the delivery of footpath extensions given that outdoor dining, on footpaths and on-streets, has become critical to supporting local businesses and activating public spaces for community. The City's risk appetite statement notes that it will tolerate capital outlays attributable to innovation to meet community needs and provide better outcomes.
33. We acknowledge the diverse expectations of our stakeholders in how we manage public spaces, including the community, businesses, ratepayers, regulatory bodies and elected officials. Our risk appetite seeks to manage public spaces for the benefit of the community, whilst being prepared to implement change and embrace innovation. Outdoor dining, on footpaths and on-streets, has become an important part of the City's culture and street life. The draft Guidelines seek to optimise benefits of outdoor dining while maintaining access to public spaces.
34. We recognise that health and safety risks are inherent in all of our activities and in the public domain for which we are responsible. We acknowledge that achieving a risk-free environment is not feasible, especially in the public domain. The City has a minimal risk appetite where the risks associated with activities can be effectively mitigated. The proposed changes outlined in the draft Outdoor Dining Guidelines are considered to represent minimal public domain safety and amenity risks, balancing the benefits to the community and the economy from these activities.

Financial Implications

35. A total of \$20 million has been included in the Long-Term Financial plan to allow the roll-out of footpath extensions.
36. Funds for the concrete barriers have been approved until June 2027, allowing the City time to transition the temporary on-street spaces to footpath extensions. Should temporary barriers be required beyond this date, this will be addressed in a future budget.

Relevant Legislation

37. Roads Act 1993
38. Local Government Act 1993
39. Environmental Planning and Assessment Act 1979

Critical Dates / Time Frames

- 40. The current budget and approvals to allow on-street dining are due to expire on 30 June 2027. Should temporary barriers be required beyond this date, this will be addressed in future budgets.

Public Consultation

- 41. The updated draft Outdoor Dining Guidelines will be placed on public exhibition for 8 weeks from mid-January to mid-March 2026.
- 42. City staff will begin consultation with businesses who currently have temporary on-street dining approvals once exhibition of the draft Guidelines begins.

GRAHAM JAHN AM

Chief Planner / Executive Director City Planning, Transport & Development

David Fitzpatrick, Senior Planner